

UNITED STATES CODE ANNOTATED
TITLE 11. BANKRUPTCY

CHAPTER 1—GENERAL PROVISIONS

§ 101. Definitions

~~In this title—~~ **In this title the following definitions shall apply:**¹

(1) **The term**² "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized.

(2) **The term** "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

(3) **The term “assisted person” means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than \$150,000.**³

¹Bankruptcy Reform Act of 2001, sec. 1201(1).

²Bankruptcy Reform Act of 2001, sec. 1201(2) (in each paragraph of § 101).

³Bankruptcy Reform Act of 2001, sec. 226(a).

(4) **The term "attorney"** means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law.

(4A) **The term "bankruptcy assistance"** means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.⁴

(5) **The term "claim"** means--

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(6) **The term "commodity broker"** means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.

(7) **The term "community claim"** means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

(8) **The term "consumer debt"** means debt incurred by an individual primarily for a personal, family, or household purpose.

(9) **The term "corporation"**--

(A) includes--

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership.

(10) **The term "creditor"** means--

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

⁴Bankruptcy Reform Act of 2001, sec. 226(a)(2).

(C) entity that has a community claim.

(10A) The term “current monthly income”--

(A) means the average monthly income from all sources which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether the income is taxable income, derived during the 6-month period preceding the date of determination; and

(B) includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse), on a regular basis to the household expenses of the debtor or the debtor's dependents (and, in a joint case, the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes.⁵

(11) The term "custodian" means--

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

(12) The term "debt" means liability on a claim.

~~(12A) "debt for child support" means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;⁶~~

(12A) The term “debt relief agency” means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include--

(A) any person that is an officer, director, employee or agent of that person;

(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of the person, to the extent that the creditor is assisting the person to restructure any debt owed by the person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union; or

⁵Bankruptcy Reform Act of 2001, sec. 102(b).

⁶Bankruptcy Reform Act of 2001, sec. 211.

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.⁷

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(13A) The term "debtor's principal residence"--

(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer.⁸

(14) "disinterested person" means person that--

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not an investment banker for any outstanding security of the debtor;

(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;

(14) The term "disinterested person" means a person that--

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.⁹

(14A) The term "domestic support obligation" means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

(A) owed to or recoverable by--

⁷Bankruptcy Reform Act of 2001, sec. 226(a)(3).

⁸Bankruptcy Reform Act of 2001, sec. 306(c)(1).

⁹Bankruptcy Reform Act of 2001, sec. 414.

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of--

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt.¹⁰

(15) **The term "entity"** includes person, estate, trust, governmental unit, and United States trustee.

(16) **The term "equity security"** means--

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

(17) **The term "equity security holder"** means holder of an equity security of the debtor.

(18) **The term "family farmer"** means--

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

¹⁰Bankruptcy Reform Act of 2001, sec. 211.

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) **The term** "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(20) **The term** "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person.

(21) **The term** "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

(21A) The term "farmout agreement" means a written agreement in which--

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property.

(21B) **The term** "Federal depository institutions regulatory agency" means--

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation.

~~(22) "financial institution" means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as~~

agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer;

(22) the term “financial institution”--

(A) means--

(i) a Federal reserve bank or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator, or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, the customer; or

(ii) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940; and

(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991;¹¹

(22) The term “financial institution” means--

(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, such customer; or

(B) in connection with a securities contract, as defined in section 741, an investment company registered under the Investment Company Act of 1940.¹²

(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than \$100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period.¹³

¹¹114 Stat 2763, *2764, sec. 112(c)(3).

¹²Bankruptcy Reform Act of 2001, sec. 907(b)(1).

¹³Bankruptcy Reform Act of 2001, sec. 907(b)(2).

~~(23) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;~~

(23) The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

~~(24) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;~~

(24) The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.¹⁴

~~(25) The term "forward contract" means a contract means--~~

(A) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, ~~or any combination thereof or option thereon;~~ **or any other similar agreement;**

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or

¹⁴Bankruptcy Reform Act of 2001, sec. 802(b).

(D), but not to exceed the actual value of such contract on the date of the filing of the petition.¹⁵

~~(26) "forward contract merchant" means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;~~

(26) The term "forward contract merchant" means a Federal reserve bank, or an entity, the business of which consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.¹⁶

(27) The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(27A) The term "health care business"--

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for--

- (i) the diagnosis or treatment of injury, deformity, or disease; and**
- (ii) surgical, drug treatment, psychiatric, or obstetric care; and**

(B) includes--

(i) any--

- (I) general or specialized hospital;**
- (II) ancillary ambulatory, emergency, or surgical treatment facility;**
- (III) hospice;**
- (IV) home health agency; and**
- (V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and**

(ii) any long-term care facility, including any--

- (I) skilled nursing facility;**
- (II) intermediate care facility;**
- (III) assisted living facility;**
- (IV) home for the aged;**
- (V) domiciliary care facility; and**

¹⁵Bankruptcy Reform Act of 2001, sec. 907(a)(1)(A).

¹⁶Bankruptcy Reform Act of 2001, sec. 907(b)(3)

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.¹⁷

~~(27A)~~ (27B)¹⁸ The term “incidental property” means, with respect to a debtor's principal residence--

(A) property commonly conveyed with a principal residence in the area where the real estate is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.¹⁹

(28) The term “indenture” means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor.

(29) The term “indenture trustee” means trustee under an indenture.

(30) The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

(31) The term “insider” includes--

(A) if the debtor is an individual--

- (i) relative of the debtor or of a general partner of the debtor;
- (ii) partnership in which the debtor is a general partner;
- (iii) general partner of the debtor; or
- (iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation--

- (i) director of the debtor;
- (ii) officer of the debtor;
- (iii) person in control of the debtor;
- (iv) partnership in which the debtor is a general partner;
- (v) general partner of the debtor; or
- (vi) relative of a general partner, director, officer, or person in control of the debtor;

¹⁷Bankruptcy Reform Act of 2001, sec. 1101(a)(2) (sec. 1101(c) provides: “RULE OF CONSTRUCTION.-The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.”).

¹⁸Bankruptcy Reform Act of 2001, sec. 1101(a)(1).

¹⁹Bankruptcy Reform Act of 2001, sec. 306(c)(2).

- (C) if the debtor is a partnership--
 - (i) general partner in the debtor;
 - (ii) relative of a general partner in, general partner of, or person in control of the debtor;
 - (iii) partnership in which the debtor is a general partner;
 - (iv) general partner of the debtor; or
 - (v) person in control of the debtor;
- (D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;
- (E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and
- (F) managing agent of the debtor.

(32) **The term** “insolvent” means--

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of--

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation--

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is--

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

(33) **The term** “institution-affiliated party”--

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act.

(34) **The term** “insured credit union” has the meaning given it in section 101(7) of the Federal Credit Union Act.

(35) **The term** “insured depository institution”--

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of ~~paragraphs (21B) and (33)(A)~~ **paragraphs (23) and (35)**)²⁰ of this subsection).

(35A) **The term “intellectual property” means--**

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law;~~and[.]~~²¹

(36) **The term “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.**

(37) **The term “lien” means charge against or interest in property to secure payment of a debt or performance of an obligation.**

(38) **The term “margin payment” means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments;~~and[.]~~**²²

(38A) The term “master netting agreement”--

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing; and

(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term “master netting agreement participant” means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor.²³

(39) **The term “mask work” has the meaning given it in section 901(a)(2) of title 17.**

²⁰Bankruptcy Reform Act of 2001, sec. 1201(3).

²¹Bankruptcy Reform Act of 2001, sec. 1201(4).

²²Bankruptcy Reform Act of 2001, sec. 1201(4).

²³Bankruptcy Reform Act of 2001, sec. 907(c).

(40) **The term** “municipality” means political subdivision or public agency or instrumentality of a State.

(40A) **The term “patient” means any person who obtains or receives services from a health care business.**

(40B) **The term “patient records” means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium.**²⁴

(41) **The term** “person” includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that--

(A) acquires an asset from a person--

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of--

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

(42) **The term** “petition” means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title.

(42A) **The term** “production payment” means a term overriding royalty satisfiable in cash or in kind--

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.

(43) **The term** “purchaser” means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee.

(44) **The term** “railroad” means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.

(45) **The term** “relative” means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.

²⁴Bankruptcy Reform Act of 2001, sec. 1101(b).

(46) **The term “repo participant” means an entity that, on any day during the period beginning 90 days before the date of at any time before the filing of the petition, has an outstanding repurchase agreement with the debtor.²⁵**

~~(47) “repurchase agreement” (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;~~

(47) The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)--

(A) means--

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptance, securities, loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a

²⁵Bankruptcy Reform Act of 2001, sec. 907(a)(1)(B).

repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.²⁶

(48) **The term “securities clearing agency”** means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934, **or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission**, or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A.²⁷

(48A) **The term “securities self regulatory organization”** means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).²⁸

(49) **The term “security”--**

(A) includes--

- (i) note;
- (ii) stock;
- (iii) treasury stock;
- (iv) bond;
- (v) debenture;
- (vi) collateral trust certificate;
- (vii) pre-organization certificate or subscription;
- (viii) transferable share;
- (ix) voting-trust certificate;
- (x) certificate of deposit;
- (xi) certificate of deposit for security;
- (xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities

²⁶Bankruptcy Reform Act of 2001, sec. 907(a)(1)(C).

²⁷Bankruptcy Reform Act of 2001, sec. 907(a)(1)(D).

²⁸Bankruptcy Reform Act of 2001, sec. 401(a).

and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include--

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) **The term** "security agreement" means agreement that creates or provides for a security interest.

(51) **The term** "security interest" means lien created by an agreement.

(51A) **The term** "settlement payment" means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) **The term** "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor **who is not a family farmer** and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto ~~thereto having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000;~~²⁹

~~(51C) "small business" means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000;~~

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

²⁹Bankruptcy Reform Act of 2001, sec. 1201(5).

(51D) The term “small business debtor”--

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$3,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$3,000,000 (excluding debt owed to 1 or more affiliates or insiders).³⁰

(52) The term “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term “stockbroker” means person--

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities--

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account.

(53B) “swap agreement” means--

(A) ~~an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);~~

~~**(B)** any combination of the foregoing; or~~

~~**(C)** a master agreement for any of the foregoing together with all supplements;~~

(53B) The term “swap agreement”--

(A) means--

³⁰Bankruptcy Reform Act of 2001, sec. 432(a).

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including--

(I) a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or an equity swap, option, future, or forward agreement;

(V) a debt index or a debt swap, option, future, or forward agreement;

(VI) a credit spread or a credit swap, option, future, or forward agreement;

(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

(VIII) a weather swap, weather derivative, or weather option;

(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that--

(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i)

through (v), but do not to exceed the actual value of such contract on the date of the filing of the petition; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.³¹

(53C) **The term** “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

(53D) **The term** “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

~~(54) **The term** “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption;~~

(54) The term “transfer” means--

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with--

(i) property; or

(ii) an interest in property.³²

(54A) the term 'uninsured State member bank' means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation; and³³

³¹Bankruptcy Reform Act of 2001, sec. 907(a)(1)(E).

³²Bankruptcy Reform Act of 2001, sec. 1201(6).

³³114 Stat 2763, *2764, sel. 112(c)(4).

(55) **The term** "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

(56A) **The term** "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

§ 102. Rules of construction

In this title--

- (1) "after notice and a hearing", or a similar phrase--
 - (A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but
 - (B) authorizes an act without an actual hearing if such notice is given properly and if--
 - (i) such a hearing is not requested timely by a party in interest; or
 - (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;
- (2) "claim against the debtor" includes claim against property of the debtor;
- (3) "includes" and "including" are not limiting;
- (4) "may not" is prohibitive, and not permissive;
- (5) "or" is not exclusive;
- (6) "order for relief" means entry of an order for relief;
- (7) the singular includes the plural;
- (8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and
- (9) "United States trustee" includes a designee of the United States trustee.

§ 103. Applicability of chapters

- (a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, **and this chapter, sections 307, 362(I), 555 through 557, and 559 through 562 apply in a case under chapter 15.**³⁴
- (b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.
- (c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.
- (d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

³⁴Bankruptcy Reform Act of 2001, sec. 802(a)(1).

(e) SCOPE OF APPLICATION.--Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.³⁵

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Chapter 13 of this title applies only in a case under such chapter.

(j) Chapter 12 of this title applies only in a case under such chapter.

(j) Chapter 15 applies only in a case under such chapter, except that--

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.³⁶

§ 104. Adjustment of dollar amounts

(a) The Judicial Conference of the United States shall transmit to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year after May 1, 1985, a recommendation for the uniform percentage adjustment of each dollar amount in this title and in section 1930 of title 28.

(b) (1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections **101(3)**,³⁷ 109(e), 303(b), 507(a), ~~522(d)~~, **522(d)**, **522(f)(3)**, **522(n)**, **522(p)**,³⁸ and 523(a)(2)(C) immediately before such April 1 shall be adjusted--

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest \$25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the

³⁵114 Stat 2763, *2764, sec. 112(c).

³⁶Bankruptcy Reform Act of 2001, sec. 802(a)(1) (NOTE: this creates two subsections (j)).

³⁷Bankruptcy Reform Act of 2001, sec. 226(b).

³⁸Bankruptcy Reform Act of 2001, sec. 322(b)(1). Sec. 1202 adds “522(f)(3)”.

dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), ~~522(d)~~, **522(d)**, **522(f)(3)**, **522(n)**, **522(p)**,³⁹ and 523(a)(2)(C) of this title.

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

(4) The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection.⁴⁰

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest, ~~may –~~

~~(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and~~

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and⁴¹

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that--

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

³⁹Bankruptcy Reform Act of 2001, sec. 322(b)(2). Sec. 1202 adds “522(f)(3)”.

⁴⁰Bankruptcy Reform Act of 2001, sec. 1002(a) (sec. 1002(b) states: “The first adjustment required by section 104(b)(4) of title 11, United States Code, as added by subsection (a) of this section, shall occur on the later of- (1) April 1, 2001; or (2) 60 days after the date of enactment of this Act.”).

⁴¹Bankruptcy Reform Act of 2001, sec. 440.

- (b) in a case under chapter 11 of this title--
- (i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
 - (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
 - (iii) sets the date by which a party in interest other than a debtor may file a plan;
 - (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
 - (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
 - (vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

§ 106. Waiver of sovereign immunity

(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

(3) The court may issue against a governmental unit an order, process, or judgment under such sections or the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rules of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

(4) The enforcement of any such order, process, or judgment against any governmental unit shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit and, in the case of a money judgment against the United States, shall be paid as if it is a judgment rendered by a district court of the United States.

(5) Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.

(b) A governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose.

(c) Notwithstanding any assertion of sovereign immunity by a governmental unit, there shall be offset against a claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

§ 107. Public access to papers

(a) Except as provided in subsection (b) of this section, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may--

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

§ 108. Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, ~~922, 1201, or~~ **922, 1201, or**⁴² 1301 of this title, as the case may be, with respect to such claim.

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not--

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, **a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958,**⁴³ a small business investment company licensed by the Small Business Administration under ~~subsection (c) or (d) of~~⁴⁴ section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, ~~or except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or~~⁴⁵

~~(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.~~

(3) (A) a foreign insurance company, engaged in such business in the United States; or

(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or

⁴²Bankruptcy Reform Act of 2001, sec. 1203.

⁴³114 Stat 2763, *2764, sec. 1(e).

⁴⁴Bankruptcy Reform Act of 2001, sec. 1204(1).

⁴⁵114 Stat 2763, *2764, sec. 112(c)(1).

agency (as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) in the United States.⁴⁶

- (c) An entity may be a debtor under chapter 9 of this title if and only if such entity--
- (1) is a municipality;
 - (2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;
 - (3) is insolvent;
 - (4) desires to effect a plan to adjust such debts; and
- (5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;
- (B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;
- (C) is unable to negotiate with creditors because such negotiation is impracticable; or
- (D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.
- ~~(d) Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.~~
- (d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.⁴⁷**
- (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 may be a debtor under chapter 13 of this title.
- (f) Only a family farmer with regular annual income may be a debtor under chapter 12 of this title.

⁴⁶Bankruptcy Reform Act of 2001, sec. 802(d).

⁴⁷114 Stat 2763, *2764, sec. 112(c)(2).

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(h) (1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

(2) (A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency by reason of the requirements of paragraph (1).

(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling service may be disapproved by the United States trustee or bankruptcy administrator at any time.

(3) (A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that-

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that

debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.⁴⁸

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section--

(1) "bankruptcy petition preparer" means ~~a person, other than an attorney or an employee of an attorney~~ **the attorney for the debtor or an employee of such attorney under the direct supervision of such attorney⁴⁹**, who prepares for compensation a document for filing; and

(2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b) (1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address. **If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to-**

(A) sign the document for filing; and

(B) print on the document the name and address of that officer, principal, responsible person or partner.⁵⁰

~~(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.~~

(2) (A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

(B) The notice under subparagraph (A)-

(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

(iii) shall-

⁴⁸Bankruptcy Reform Act of 2001, sec. 106(a).

⁴⁹Bankruptcy Reform Act of 2001, sec. 221(1).

⁵⁰Bankruptcy Reform Act of 2001, sec. 221(2)(A).

(I) be signed by-

(aa) the debtor; and

(bb) the bankruptcy petition preparer, under penalty of perjury; and

(II) be filed with any document for filing.⁵¹

(c) (1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

~~(2)~~ For purposes **(2)(A) Subject to subparagraph (B), for purposes⁵²** of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer.⁵³

~~(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.⁵⁴~~

~~(d)(1)~~ **(d)** A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

~~(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.⁵⁵~~

(e) (1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

~~(2) A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).~~

(2) (A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

(B) The legal advice referred to in subparagraph (A) includes advising the debtor-

(i) whether-

⁵¹Bankruptcy Reform Act of 2001, sec. 221(2)(B).

⁵²Bankruptcy Reform Act of 2001, sec. 221(3)(A)(i).

⁵³Bankruptcy Reform Act of 2001, sec. 221(3)(A)(ii).

⁵⁴Bankruptcy Reform Act of 2001, sec. 221(3)(B).

⁵⁵Bankruptcy Reform Act of 2001, sec. 221(4).

- (I) to file a petition under this title; or
- (II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;
- (ii) whether the debtor's debts will be eliminated or discharged in a case under this title;
- (iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;
- (iv) concerning-
 - (I) the tax consequences of a case brought under this title; or
 - (II) the dischargeability of tax claims;
- (v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- (vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or
- (vii) concerning bankruptcy procedures and rights.⁵⁶

~~(f)(1)~~ (f) A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

~~(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).~~⁵⁷

~~(g)(1)~~ (g) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

~~(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).~~⁵⁸

(h) **(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.**⁵⁹

⁵⁶Bankruptcy Reform Act of 2001, sec. 221(5).

⁵⁷Bankruptcy Reform Act of 2001, sec. 221(6).

⁵⁸Bankruptcy Reform Act of 2001, sec. 221(7).

⁵⁹Bankruptcy Reform Act of 2001, sec. 221(8)(B).

~~(2) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a~~ ⁶⁰ ~~declaration under penalty of perjury~~ **by the bankruptcy petition preparer shall be filed together with the petition**⁶¹ disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. **If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).**⁶²

~~(3) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).~~

(3) (A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services-

(i) rendered by the preparer during the 12-month period immediately preceding the date of filing of the petition; or

(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

(C) An individual may exempt any funds recovered under this paragraph under section 522(b).⁶³

~~(4) The debtor, the trustee, a creditor, or the United States trustee~~ **the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,**⁶⁴ may file a motion for an order under paragraph (2).

(5) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

~~(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional~~

⁶⁰Bankruptcy Reform Act of 2001, sec. 221(8)(C)(i).

⁶¹Bankruptcy Reform Act of 2001, sec. 221(8)(C)(ii).

⁶²Bankruptcy Reform Act of 2001, sec. 221(8)(C)(iii).

⁶³Bankruptcy Reform Act of 2001, sec. 221(8)(D).

⁶⁴Bankruptcy Reform Act of 2001, sec. 221(8)(E).

~~disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor=~~

(i) (1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, United States trustee, or bankruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor-⁶⁵

(A) the debtor's actual damages;

(B) the greater of--

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.

(j) (1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2) (A) In an action under paragraph (1), if the court finds that--

(i) a bankruptcy petition preparer has--

(I) engaged in conduct in violation of this section or of any provision of this title a ~~violation of which subjects a person to criminal penalty~~⁶⁶;

(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

⁶⁵Bankruptcy Reform Act of 2001, sec. 221(9).

⁶⁶Bankruptcy Reform Act of 2001, sec. 221(10)(A)(i).

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct, the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, ~~or has not paid a penalty~~ **has not paid a penalty**⁶⁷ imposed under this section, **or failed to disgorge all fees ordered by the court**⁶⁸ the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued upon motion of the court, the trustee, the United States trustee, or the bankruptcy administrator.⁶⁹

(4)⁷⁰ The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable ~~attorney's~~ **attorneys**⁷¹ fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

(l) (1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure.

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer-

(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

(B) advised the debtor to use a false Social Security account number;

(C) failed to inform the debtor that the debtor was filing for relief under this title; or

(D) prepared a document for filing in a manner that failed to disclose the identity of the preparer.

⁶⁷Bankruptcy Reform Act of 2001, sec. 221(10)(A)(ii)(I).

⁶⁸Bankruptcy Reform Act of 2001, sec. 221(10)(A)(ii)(II).

⁶⁹Bankruptcy Reform Act of 2001, sec. 221(10)(C).

⁷⁰Bankruptcy Reform Act of 2001, sec. 221(10)(B).

⁷¹Bankruptcy Reform Act of 2001, sec. 1205.

(3) The debtor, the trustee, a creditor, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

(4) (A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.⁷²

§ 111. Credit counseling services; financial management instructional courses

(a) The clerk of each district shall maintain a publicly available list of-

(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or course of instruction fully satisfies the applicable standards set forth in this section.

(3) When an agency or course of instruction is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or course of

⁷²Bankruptcy Reform Act of 2001, sec. 221(11).

instruction is initially approved if it did not appear on the approved list for the district under subsection (a) immediately prior to approval.

(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or course of instruction which has demonstrated during the probationary or subsequent period that such agency or course of instruction-

(A) has met the standards set forth under this section during such period; and

(B) can satisfy such standards in the future.

(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate United States District Court.

(c) (1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum-

(A) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which-

(i) are not employed by the agency; and

(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(D) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

(E) provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

(F) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience,

and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

(G) demonstrate adequate experience and background in providing credit counseling; and

(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

(d) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management-

(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum-

(A) trained personnel with adequate experience and training in providing effective instruction and services;

(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction;

(C) adequate facilities situated in reasonably convenient locations at which such course of instruction is offered, except that such facilities may include the provision of such course of instruction or program by telephone or through the Internet, if the course of instruction or program is effective; and

(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such course of instruction or program, including any evaluation of satisfaction of course of instruction or program requirements for each debtor attending such course of instruction or program, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such course of instruction or program is offered; and

(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition-

(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

(e) The District Court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The District Court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

(f) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

(g) (1) No credit counseling service may provide to a credit reporting agency information concerning whether an individual debtor has received or sought instruction concerning personal financial management from the credit counseling service.

(2) A credit counseling service that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of-

(A) any actual damages sustained by the debtor as a result of the violation; and

(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.⁷³

⁷³Bankruptcy Reform Act of 2001, sec. 106(e)(1).